

Statement of Congressman Tom Marino (PA-10)
United States Senate Committee on the Judiciary
Oversight of the Ensuring Patient Access and
Effective Drug Enforcement Act
Tuesday, December 12, 2017 at 10:00 a.m.

Chairman Grassley, Ranking Member Feinstein and other esteemed Members of the Committee, thank you for offering me the opportunity to submit a statement for the record today on my legislation, the *Ensuring Patient Access and Effective Drug Enforcement Act*.

As this Committee is aware, I was nominated to be the next Director of the Office of National Drug Control Policy, or ONDCP. Following an expose by the Washington Post and a report on 60 Minutes, I withdrew my nomination so that I would not be a distraction to this Administration in the fight against the opioid epidemic. I am here today to correct the record on these reports filled with flat out untruths and false statements.

One particular detail that 60 Minutes failed to inform their audience of is that their star source, Joe Rannazzisi, is currently working as a trial lawyer actively pursuing lawsuits against drug distributors. At the bare minimum this shows a severe conflict of interest and a disturbing bias.

In 2012 I visited with pharmacies in my district where I learned that it was becoming difficult for legitimate patients to access needed medication. I directed my staff to do some research on the issue and find out more regarding the supply chain. I wanted to learn more about why the opioid problem was worsening and yet individuals suffering with pain were unable to access medications.

One problem I identified was that the term “imminent danger” was not defined in the Controlled Substances Act. The Government Accountability Office (GAO) in 2015 also issued a report stating that there needed to be more clarity regarding DEA authorities. Utilizing this vague, undefined language the Drug Enforcement Agency’s Office of Diversion Control overzealously utilized suspension orders and ran roughshod over the will of Congress and Justice Department leaders.

In particular, the leader of the Diversion Control Office, Joe Rannazzisi, had shown a particular cavalier disregard for the rule of law. In a public setting, when asked specifically what the Controlled Substances Act term “imminent danger to the public health and safety” meant, his response was “whatever I think it means.” I found this to be a completely irresponsible and unreasonable answer.

In response to these concerns, in the 113th Congress I introduced the *Ensuring Patient Access and Effective Drug Enforcement Act*. This legislation for the first time aimed to define “imminent danger to public health and safety,” similar to other laws like the *Mine Safety Act*, where the term is well defined.

Following introduction, the House Energy and Commerce Subcommittee on Health held hearings, the Energy and Commerce Committee reported the bill by voice vote to the House of Representatives, and it was passed by the House of Representatives by voice vote.

In the 114th Congress I again introduced this legislation. The Energy and Commerce Committee held a hearing, it was reported favorably to the House of Representatives, and passed the House of Representatives by a voice vote.

In the 114th Congress, Senators Hatch and Whitehouse introduced their version of the legislation. The bill was reported out of the Senate Judiciary Committee, passed the Senate by unanimous consent, passed the House by unanimous consent, and was signed into law by President Obama.

My legislation defined “imminent danger to the public health or safety” as a “foreseeable risk of serious adverse health consequences or death,” which would have had little impact on DEA enforcement. In the Senate version, which became law, this language was changed to a “substantial likelihood of an immediate threat that death, serious bodily harm, or abuse of a controlled substance will occur,” a much higher burden. This change was made at the request of the DOJ.

Throughout the entire process my office and Senator Hatch’s office worked closely with the Department of Justice and the Drug Enforcement Agency to find acceptable language. When the legislation was finalized in the Senate, both the DOJ and the DEA had signed off on the final language. After the legislation was passed, there was no objection by the White House or any Agency and the bill was signed into law.

Senators Manchin and McCaskill have come forward and attacked my motives and integrity following the media reports. Either Senator had plenty of opportunity to provide input or stop this legislation when it was going through the regular legislative process, neither said a word. Instead, they voted in favor of this legislation.

Before becoming a Congressman for the 10th District of Pennsylvania I served as a prosecutor for 18 years, first as a District Attorney for Lycoming County and then as U.S. Attorney for the Middle District of Pennsylvania. I worked tirelessly to prosecute drug dealers and producers, putting them behind bars and preventing them from destroying lives. I worked closely with community and local leaders to start drug treatment and prevention programs. I have dedicated my life to protecting Americans from the scourge of illegal drugs. I have been involved with and supported law enforcement throughout my life. I would never introduce or support legislation that would make it easier for dangerous drugs to proliferate.

In an October 25 hearing before the House Energy and Commerce Committee, Mr. Neil Doherty, the Deputy Assistant Administrator in the Office of Diversion Control for the DEA, testified regarding this law. In his testimony, Mr. Doherty stated that between 2011 and 2016, prior to passage of my legislation, the number of immediate suspension orders reduced substantially. Following passage of my legislation, immediate suspension orders have actually increased and the quantity of opioids distributed has decreased. He went on to say that the data doesn’t show

that this legislation fueled the opioid epidemic and that the DEA recommended to President Obama that he sign this legislation into law.

Since so far all we have heard from the media is a disgruntled former DEA official with a vested interest pushing his narrative, I look forward to hearing what the current DEA and DOJ have to say regarding this legislation and the effect on their ability to execute their mission. The data shows that there has been no impact and if anything the DEA has been able to issue more immediate suspension orders while having more legal clarity.